

Federal Communications Commission

DA 01-2210

Before the
Federal Communications Commission
Washington, D.C. 20554

2001 SEP 21 P 2: 56

In the Matter of)
)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Cheyenne Wells, Colorado) MM Docket No. 01-250
) RM-10273
)
(Flagler, Colorado)) MM Docket No. 01-251
) RM-10274
)
(Moberly, Missouri)) MM Docket No. 01-252
) RM-10275
)
(Stratton, Colorado)) MM Docket No. 01-253✓
) RM-10276

NOTICE OF PROPOSED RULE MAKING

Adopted: September 12, 2001;

Released: September 21, 2001

Comment Date: November 13, 2001

Reply Comment Date: November 27, 2001

By the Chief, Allocations Branch:

1. Before the Allocations Branch for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. The petitioner for each proposal, has stated that it will apply for each requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule Making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and

expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MM Docket No. 01-250; RM-10224

Petitioner: Cheyenne Wells Broadcasting

C/o A. Wray Fitch, III
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, Virginia 22102-3807

Proposal: Allot Channel 224C1 at Cheyenne Wells, Colorado, as that community's first local aural transmission service.¹

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Cheyenne Wells, Colorado	-----	224C1

Coordinates: 38-49-16 NL and 102-21-09 WL

Additional Information: This allotment does not require a site restriction.

FCC Contact: R. Barthen Gorman (202) 418-2180

B. MM Docket No. 01-251; RM-10225

Petitioner: Flagler Broadcasting

c/o A. Wray Fitch, III
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, Virginia 22102-3807

¹ Cheyenne Wells is an incorporated community with a population of 1,128 persons (1990 U.S. Census).

Proposal: Allot Channel 283C3 at Flagler, Colorado, as that community's first local aural transmission service.²

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Flagler, Colorado	-----	283C3

Coordinates: 39-17-17 NL and 103-08-32 WL

Additional Information: This allotment requires a site restriction of 6.5 kilometers (4.1 miles) west of Flagler, Colorado.

FCC Contact: R. Barthen Gorman (202) 418-2180

C. MM Docket No. 01-252; RM-10221

Petitioner: Charles Crawford

4553 Bordeaux Ave.
Dallas, Texas 75205

Proposal: Allot Channel 223A to Moberly, Missouri, as that community's sixth local aural transmission service.³

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Moberly, Missouri 247C3, 284C, 288C2		247C3, 284C, 288C2, 223A

Coordinates: 39-25-06 NL and 92-26-17 WL.

Additional Information: This allotment is at the city reference coordinates and does not require a site restriction.

FCC Contact: R. Barthen Gorman (202) 418-2180

² Flagler is an incorporated community with a population of 564 persons (1990 U.S. Census).

³ Moberly is already served by Station KCSX(FM), Channel 247C3; Station KRES(FM), Channel 284C; Station KZZT(FM), Channel 288C2' and Station KWIX(AM), 1230 kHz. In addition, a noncommercial educational construction permit has been issued for Channel 211A.

D. MM Docket No. 01-253; RM-10222**Petitioner:** Stratton Broadcasting

C/o A, Wray Fitch, III
Gammon & Grange, P.C.
8280 Greensboro Drive, 7th Floor
McLean, Virginia 22102-3807

Proposal: Allot Channel 246C1 at Stratton, Colorado, as that community's first local aural transmission service.⁴

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Stratton, Colorado	-----	246C1

Coordinates: 39-18-34 NL and 102-33-17 WL

Additional Information: This allotment requires a site restriction of 4.3 kilometers (2.7 miles) east of Stratton, Colorado.

FCC Contact: R. Barthen Gorman (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference only the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before **November 13, 2001**, and reply comments on or before **November 27, 2001**, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

⁴ Stratton is an incorporated city. The 1990 U.S. Census lists Stratton's population at 649 persons.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in a particular docket unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW; TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 Twelfth Street, SW, Washington, D.C.